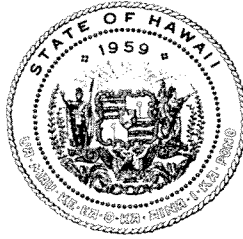


2008 MAR 20 P 12: 04

HEARINGS OFFICE



OFFICE OF ADMINISTRATIVE HEARINGS
CONDOMINIUM DISPUTE RESOLUTION PILOT PROGRAM
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of	)	CDR-2007-9
)	
CATHERINE SHIM, Individually and	)	HEARINGS OFFICER'S FINDINGS
YUAN Y. SHAW, Individually,	)	OF FACT, CONCLUSIONS OF LAW,
	)	AND DECISION; ATTACHMENT "A"
Petitioners,)	
)	
vs.)	
)	
AOAO HARBOR SQUARE, An Entity, Form)	
Unknown,)	
)	
Respondent.)	
_____)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

On August 21, 2007, Catherine Shim, Yuan Y. Shaw, Preciosa Lopez, and Harbor Square Volunteer Apartment Owners' Committee (VAOC) ("Petitioners"), by and through their attorney, Stephen M. Shaw, Esq., filed a request for hearing pursuant to Hawaii Revised Statutes ("HRS") Chapter 514B against AOAO Harbor Square, Certified Management, Inc. and Brian Grayling ("Respondents"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

On October 31, 2007 and November 1, 2007, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer pursuant to HRS

Chapters 91, 92 and 514B. Petitioners¹ were represented by their attorney, Stephen M. Shaw, Esq. Respondent² was represented by Lissa H. Andrews, Esq. and Devon I. Peterson, Esq.

At the close of the hearing, the Hearings Officer directed the parties to file written closing arguments and proposed findings of fact and conclusions of law. Accordingly, on November 21, 2007, Petitioners filed their closing argument and proposed findings of fact and conclusions of law. On December 12, 2007, Respondent filed its closing argument and proposed findings and conclusions. Petitioners filed a reply brief and errata to their closing argument on December 21, 2007 and December 27, 2007, respectively.

Upon review of the entire record of this proceeding, the Hearings Officer hereby adopts Respondent's Proposed Findings of Fact Nos. 1 – 27 and Conclusions of Law Nos. 1 – 6. Respondent's proposed findings of fact and conclusions of law are attached hereto as Attachment "A".

II. RECOMMENDED ORDER

Based upon the foregoing findings and conclusions, the Hearings Officer orders that this matter be and is hereby dismissed and that each party bear its/their own attorney's fees, costs, and expenses.

MAR 20 2008

DATED at Honolulu, Hawaii: _____.

/s/ CRAIG H. UYEHARA

CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

¹ On October 17, 2007, the Hearings Officer issued an order granting Respondents' motion to dismiss Preciosa Lopez and Harbor Square Volunteer Apartment Owners' Committee (VAOC) as Petitioners herein.

² By order dated November 16, 2007, Certified Management, Inc. and Brian Grayling were dismissed as Respondents in this case.

ORIGINAL

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STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

2007 DEC 12 P 2: 56

OFFICE OF ADMINISTRATIVE HEARINGS
CONDOMINIUM DISPUTE RESOLUTION PILOT PROGRAM
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of	)	CDR-2007-9
)	
CATHERINE SHIM, Individually and)	
YUAN Y. SHAW, Individually,	)	RESPONDENT AOA HARBOR
	)	SQUARE'S PROPOSED FINDINGS OF
Petitioners,	)	FACT AND CONCLUSIONS OF LAW;
	)	CERTIFICATE OF SERVICE
vs.)	
)	
AOAO HARBOR SQUARE, An Entity,	)	Trial Date: October 31, 2007
Form Unknown,	)	Time: 9:00 a.m.
	)	Hearings Officer: Craig H. Uyehara
Respondent.)	
)	

**RESPONDENT AOA HARBOR SQUARE'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The hearing for the above-captioned matter was held on October 31, 2007 through November 1, 2007. In attendance were Petitioners Catherine Shim and Yuan Shaw, represented by their counsel Stephen M. Shaw, Esq. and Respondent AOA Harbor Square (the

ATTACHMENT "A"

“Association”) represented by its counsel Lissa H. Andrews, Esq. and Devon I. Peterson, Esq. The Hearings Officer, having considered the parties evidence of record and arguments, hereby issues its findings of fact and conclusions of law in the above-entitled matter.

I. FINDINGS OF FACT

A. Procedural Background

1. On July 23, 2007, Petitioners Catherine Shim and Respondent Association participated in mediation addressing Petitioners’ claims regarding (1) proposed remediation work to Harbor Square’s lanais; (2) the disclosure of the Association’s documents to Petitioners; and (3) the removal of Association Board Members, Ann Collins (President) and James Vrechek (Treasure).

2. On August 21, 2007 Petitioners Catherine Shim, Yuan Shaw, Preciosa Lopez, and the Harbor Square Volunteer Apartment Owners’ Community (“VAOC”) filed their Request for Hearing against Respondents AOA Harbor Square, Certified Management, Inc. (“Certified Management”) and Brian Grayling, the Association’s Resident Manager. Petitioners’ Request for Hearing included the three claims addressed in mediation and several other claims which had not been mediated.

3. On September 28, 2007, Respondents filed their Motion to Dismiss Request for Hearing, their Motion to Dismiss Certified Management and Mr. Grayling as Respondents, and their Motion to Dismiss Preciosa Lopez and VAOC as Petitioners. On that same date, Petitioners filed their Motion for Summary Judgment or Adjudication of Issues (Lanai Repairs) and their Motion for Summary Judgment or Adjudication of Issues (Voting Violations on Renovations).

4. On October 8, 2007, Respondents filed their Memorandum in Opposition to Petitioners' Motion for Summary Judgment (Lanai Repairs) and their Memorandum in Opposition to Petitioners' Motion for Summary Judgment (Voting Violations on Renovations).

5. On October 8, 2007, Petitioners filed their Memorandum in Opposition to Respondents' Motion to Dismiss Request for Hearing, their Motion to Dismiss Certified Management and Mr. Grayling as Respondents, and their Motion to Dismiss Preciosa Lopez and VAOC as Petitioners.

6. On October 10, 2007, a hearing was held on Petitioners' Motions for Summary Judgment and Respondents' Motions to Dismiss. At that time, Hearings Officer Craig Uyehara took all matters under advisement.

7. At the October 10, 2007 hearing, in regard to Respondents' Motion to Dismiss Petitioners' Request for Hearing, Petitioners conceded that they included claims in their Request for Hearing which had not been mediated at the July 23, 2007 mediation. The Hearings Officer granted Petitioners leave to file a First Amended Request for Hearing and also agreed that Respondents would have leave to file new motions based upon the amended Request for Hearing.

8. On October 15, 2007, Petitioners filed their First Amended Request for Hearing. In their First Amended Request for Hearing Petitioners raised three claims regarding: (1) proposed remediation work to Harbor Square's lanais; (2) the disclosure of the Association's documents to Petitioners; and (3) the removal of Association Board Members, Ann Collins (President) and James Vrechek (Treasure).

9. Also on October 15, 2007, Respondents filed their List of Witnesses for October 31, 2007 Hearing and List of Exhibits for October 31, 2007 Hearing.

10. On October 17, 2007, the Hearings Officer issued the following orders regarding the motions heard on October 10, 2007: (1) Order Denying Petitioners' Motion for Summary Judgment or Adjudication of Issues (Lanai Repairs); (2) Order Denying Respondents' Motion to Dismiss Certified Management Inc. and Brian Grayling as Respondents; (3) Order Denying Petitioners' Motion for Summary Judgment or Adjudication of Issues (Voting Violations on Renovations); (4) Order Granting in Part and Denying in Part Respondents' Motion to Dismiss Request for Hearing; and (5) Order Granting Respondents' Motion to Dismiss Preciosa Lopez and Harbor Square Volunteer Apartment Owners' Committee (VAOC) as Petitioners.

11. On October 18, 2007, Petitioners' Objection to Respondents' List of Exhibits filed October 15, 2007 and Request for Evidentiary Sanctions.

12. On October 19, 2007, Petitioners served subpoenas duces tecum upon Joyce Y. Neeley, Esq., Mark A. Rossi, Jim McKellar, Colleen Iseri, and Toni Floerke-Politsch.

13. On October 26, 2007, Respondents filed their Motion for Reconsideration of the October 17, 2007 Order Denying Respondents' Motion to Dismiss Certified Management, Inc. and Brian Grayling as Respondents and their Response to Petitioners' First Amended Request for Hearing filed October 15, 2007.

14. Also on October 26, 2007, Petitioners served subpoena duces tecum upon Art Heath and Linda T. Alexander.

15. On October 29, 2007, Respondents filed their Motion to Quash and/or for Protective Order as to Subpoena Issued to Joyce Y. Neeley, Esq.; Motion to Quash and/or for Protective Order as to Subpoenas Issued to Jim McKeller, Colleen Iseri, Toni Floerke-Politsch,

Art Heath and Linda T. Alexander; and Motion for Partial Summary Judgment Regarding Petitioners' Lanai Repairs Claim.

16. On October 30, 2007, Respondents filed their Motion for Partial Summary Judgment Regarding Petitioners' Request to Remove Ann Collins and James Vrechek from the Board of Directors and Memorandum in Opposition to Petitioners' Objection to Respondents' List of Exhibits filed October 15, 2007 and Request for Evidentiary Sanctions. On that same date, Petitioners filed their Declaration of Yuan Y. Shaw in Lieu of Direct Testimony and in Opposition to Respondents' Late Motion for Summary Adjudication; Declaration of Catherine Shim in Lieu of Direct Testimony and in Opposition to Respondents' Late Motion for Summary Adjudication; and Petitioners' Second Submission of Exhibits and Exhibit List.

17. On October 31, 2007, a hearing was held before Hearings Officer Crag H. Uyehara in the King Kalakaua Building, 335 Merchant Street, Honolulu, Hawaii, for Petitioners' First Amended Request for Hearing, Petitioners' Objection to Respondents' List of Exhibits filed October 15, 2007 and Request for Evidentiary Sanctions, Respondents' Motion to Quash and/or for Protective Order as to Subpoena Issued to Joyce Y. Neeley, Esq.; Respondents' Motion to Quash and/or for Protective Order as to Subpoenas Issued to Jim McKeller, Colleen Iseri, Toni Floerke-Politsch, Art Heath and Linda T. Alexander; Respondents' Motion for Reconsideration of the October 17, 2007 Order Denying Respondents' Motion to Dismiss Certified Management, Inc. and Brian Grayling as Respondents and their Response to Petitioners' First Amended Request for Hearing filed October 15, 2007; Respondents' Motion for Partial Summary Judgment Regarding Petitioners' Lanai Repairs Claim; Respondents' Motion for Partial Summary Judgment Regarding Petitioners' Request to Remove Ann Collins and James Vrechek from the Board of Directors. On the same date, Respondents also made an oral motion to Quash

the Subpoena Duces Tecum issued to Brian Grayling. After reviewing the motions and hearing arguments from the parties, the Hearings Officer issued the following rulings: (a) Denying Petitioners' Objection to Respondents' List of Exhibits filed October 15, 2007 and Request for Evidentiary Sanctions; (b) Granting Respondents' Motion to Quash and/or for Protective Order as to Subpoena Issued to Joyce Y. Neeley, Esq.; (c) Granting in Part and Denying in Part Respondents' Motion to Quash and/or for Protective Order as to Subpoenas Issued to Jim McKeller, Colleen Iseri, Toni Floerke-Politsch, Art Heath and Linda T. Alexander; (d) Granting Respondents' Oral Motion to Quash the Subpoena Issued to Brian Grayling; (e) Granting Respondents' Motion for Reconsideration of the October 17, 2007 Order Denying Respondents' Motion to Dismiss Certified Management, Inc. and Brian Grayling as Respondents and their Response to Petitioners' First Amended Request for Hearing filed October 15, 2007; (f) Granting Respondents' Motion for Partial Summary Judgment Regarding Petitioners' Lanai Repairs Claim; and (g) Granting Respondents' Motion for Partial Summary Judgment Regarding Petitioners' Request to Remove Ann Collins and James Vrechek from the Board of Directors.

18. Following the hearing on Petitioners' and Respondents' motions, trial began on Petitioners' only remaining claim, that Respondent Association did not comply with Hawaii Revised Statutes ("HRS") §§ 514B-157(b) and (f), by withholding the following documents:

- (a) 920 items missing from the check ledger (without redactions);
- (b) Payroll records for on-site resident managers, Brian Grayling and Carlos Barboza;
- (c) Rental payments for on-site resident managers, Brian Grayling and Carlos Barboza;

- (d) Information including documents relating to “in kind” payments to Certified Management In [sic] (CMI), Brian Grayling, and Charlos [sic] Barboza;
- (e) Invoices referring to check ledger expenses as written by CMI to CMI for “reimb”;
- (f) Other information referring to [section (e)], above;
- (g) Written notices of managing agents intent to dispose of records;
- (h) Requests for proposals, solicitations etc inviting bids for the intended spalling repairs to the lanais;
- (i) All bids relating to the intended spalling repairs to the lanais;
- (j) Contracts relating to intended spalling repair;
- (k) All documents relating to \$10,878 paid by [the Association] to spalling consultants in 2006;
- (l) Invoices relating to the lobby renovation at Town Tower (Harbor Square);
- (m) All invoices relating to the intended spalling repairs on the lanais;
- (n) All invoices to or from any member of the board of directors or officers;
- (o) General ledger and all related balance sheets and income statements for 2005/2006;
- (p) Documents including receipts for air conditioning equipment purchase and installation;
- (q) Loan documents and 2003 refinance documents pertaining to the air conditioning system;
- (r) Evidence of cost allocation as a common expense as required by then applicable HRS § 514B82.3 for the air conditioning system;

(s) Loan documents (2004-2006) for Town Towner [sic] lobby renovation, including refinancing documents;

(t) Evidence of 50% approval of Town Tower Renovation loans and loan finance under HRS § 514B-82.3;

(u) Evidence of the Town Tower renovation cost allocation as a common expense;

(v) All documents pertaining to the Town Tower Renovation (2004-2006);

(w) All Board authorizations pertaining to the Town Tower renovation; and

(x) All receipts pertaining to renovation (2004-2006).

19. On October 31, 2007, Petitioners Shaw and Shim and Constance Coughlan testified on behalf of Petitioners and Ms. Alexander testified on behalf of Respondent. On November 1, 2007, Mr. Grayling testified on behalf of Respondents.

20. At the conclusion of the testimony on November 1, 2007, the Hearings Officer instructed the parties to submit their written closing arguments and proposed findings of fact and conclusions of law. The Hearings Officer specifically instructed the parties to limit their closing statements to issues relating to the Association's disclosure of documents to Petitioners.

21. On November 13, 2007, Petitioners filed their Motion for Reconsideration of Order Granting Respondents' Motion for Partial Summary Judgment Regarding Petitioners' Lanai Repair Claim.

22. On November 28, 2007, the Hearings Officer issued an Order Denying Petitioners' Motion for Reconsideration of Order Granting Respondents' Motion for Partial Summary Judgment Regarding Petitioners' Lanai Repair Claim.

B. Substantive Facts

23. The condominium regime Harbor Square was created by a Declaration of Horizontal Property Regime dated April 15, 1970, filed in the Office of the Assistant Registrar of the Land Court State of Hawaii as Document No. 499418.

24. Petitioners own units in Harbor Square.

25. From January 2007 through April 2007, Respondents requested to review a series of documents from the Association.

26. Respondent made all of the requested documents reasonably available to Petitioners:

(a) 920 items missing from the check ledger (without redactions). The Association keeps two separate ledgers: (1) the General Ledger which was produced without any redactions to the Petitioners and (2) a separate ledger for payroll records entitled "Payroll Ledger." The Payroll Ledger is kept separately because that ledger includes sensitive, confidential employee information (for example, employee social security numbers, or garnishment information). After consulting with an expert, the Board determined that the Payroll Ledger would be made available to the extent possible without exposing the Association to claims related to improper disclosure of confidential information by redacting the names and/or social security numbers. Petitioners made no showing that they have a legitimate interest in obtaining the Association's employees' social security numbers and other confidential information.

(b) Payroll records for on-site resident managers, Brian Grayling and Carlos Barboza. The financial statements, which include the information with regard to the total

amount of payments made to the Resident Manager and to the other categories of employees of the Association, are available, at no cost, to all owners on the Association's website.

(c) Rental payments for on-site resident managers, Brian Grayling and Carlos Barboza. The financial statements, which include the information with regard to the total amount of payments made to the Resident Manager and to the other categories of employees of the Association, are available, at no cost, to all owners on the Association's website. The Rental Agreement for the unit rented for the Resident Manager was made separately available to Petitioners' attorney.

(d) Information including documents relating to "in kind" payments to Certified Management In [sic] (CMI), Brian Grayling, and Charlos [sic] Barboza. Petitioners were informed at the July 23, 2007 mediation that housing for the resident manager and the relief/assistant resident manager is provided. The relief/assistant resident manager was given a budget of up to \$5,000 to renovate a common element area so that it could be utilized as a resident manager's unit. However, the relief/assistant resident manager was not given any money directly from the Association and all amounts were paid pursuant to invoices. The invoices were made available to Petitioners for inspection on July 2, July 5, and July 20, of 2007. This information is also available to Petitioners on the Association's website.

(e) Invoices referring to check ledger expenses as written by CMI to CMI for "reimb". Petitioners were provided with all of the Association's documents, including all invoices, on July 2, 5, and 20, 2007.

(f) Other information referring to [section (e)], above. Petitioners were provided with all of the Association's documents, including all invoices, on July 2, 5, and 20, 2007.

(g) Written notices of managing agents intent to dispose of records. No documents exist for this category of documents.

(h) Requests for proposals, solicitations etc inviting bids for the intended spalling repairs to the lanais. Petitioners did not request any documents under this category prior to the instant matter. Two other unit owners, whom the Association did not know were represented by Petitioner's attorney, did request these documents from the Association. At the time the Association received those requests, it informed the owners that they were entitled under HRS 514B to know the costs that would be charged to these owners if they wished to see the documentation. The Association never received a response to these letters.

Furthermore, the Association's Resident Manager testified that documents relating to the lanai repairs are in his office and are available for any owner to review. Moreover, the Resident Manager also testified that he provided Petitioners with a cd-rom containing information specific to each lanai.

(i) All bids relating to the intended spalling repairs to the lanais. Petitioners did not request any documents under this category prior to the instant matter. Two other unit owners, whom the Association did not know were represented by Petitioner's attorney, did request these documents from the Association. At the time the Association received those requests, it informed the owners that they were entitled under HRS 514B to know the costs that would be charged to these owners if they wished to see the documentation. The Association never received a response to these letters.

Furthermore, the Association's Resident Manager testified that documents relating to the lanai repairs are in his office and are available for any owner to review.

Moreover, the Resident Manager also testified that he provided Petitioners with a cd-rom containing information specific to each lanai.

(j) Contracts relating to intended spalling repair. Petitioners did not request any documents under this category prior to the instant matter. Two other unit owners, whom the Association did not know were represented by Petitioner's attorney, did request these documents from the Association. At the time the Association received those requests, it informed the owners that they were entitled under HRS 514B to know the costs that would be charged to these owners if they wished to see the documentation. The Association never received a response to these letters.

Furthermore, the Association's Resident Manager testified that documents relating to the lanai repairs are in his office and are available for any owner to review. Moreover, the Resident Manager also testified that he provided Petitioners with a cd-rom containing information specific to each lanai.

(k) All documents relating to \$10,878 paid by [the Association] to spalling consultants in 2006. Petitioners did not request any documents under this category prior to the instant matter. Two other unit owners, whom the Association did not know were represented by Petitioner's attorney, did request these documents from the Association. At the time the Association received those requests, it informed the owners that they were entitled under HRS 514B to know the costs that would be charged to these owners if they wished to see the documentation. The Association never received a response to these letters.

Furthermore, the Association's Resident Manager testified that documents relating to the lanai repairs are in his office and are available for any owner to review.

Moreover, the Resident Manager also testified that he provided Petitioners with a cd-rom containing information specific to each lanai.

(l) Invoices relating to the lobby renovation at Town Tower (Harbor Square).

All invoices were made available to Petitioners on three separate dates in July (July 2, 5, and 20), 2007. Furthermore, one separate file related to the Town Tower Lobby Renovation was also made available to Petitioners on those dates as well.

(m) All invoices relating to the intended spalling repairs on the lanais. All

invoices were made available to Petitioners on three separate dates in July (July 2, 5, and 20), 2007.

(n) All invoices to or from any member of the board of directors or officers.

All invoices were made available to Petitioners on three separate dates in July (July 2, 5, and 20), 2007.

(o) General ledger and all related balance sheets and income statements for

2005/2006. The entire General Ledger was made available to Petitioners without redaction. The balance sheets and income statements are available to all owners on the Association website and were also made available to Petitioners in July 2, 5, and 20, 2007.

(p) Documents including receipts for air conditioning equipment purchase and

installation. Petitioners did not request to review these documents, rather the request came from Ms. Coughlan. Ms. Coughlan reviewed these documents on two dates in July 2007. Certified Management made copies of the documents Ms. Coughlan tabbed for xeroxing and provided those copies to Petitioner Shaw for her to transmit to Ms. Coughlan. Ms. Coughlan did not follow up with Certified Management when she did not receive the documents from Petitioner Shaw.

(q) Loan documents and 2003 refinance documents pertaining to the air conditioning system. Petitioners did not request to review these documents, rather the request came from Ms. Coughlan. Ms. Coughlan reviewed these documents on two dates in July 2007. Certified Management made copies of the documents Ms. Coughlan tabbed for xeroxing and provided those copies to Petitioner Shaw for her to transmit to Ms. Coughlan. Ms. Coughlan did not follow up with Certified Management when she did not receive the documents from Petitioner Shaw.

(r) Evidence of cost allocation as a common expense as required by then applicable HRS § 514B82.3 for the air conditioning system. The Budget, which is available to all unit owners, contains this information.

(s) Loan documents (2004-2006) for Town Tower [sic] lobby renovation, including refinancing documents. These documents were provided to Petitioners on July 5 and July 20, 2007.

(t) Evidence of 50% approval of Town Tower Renovation loans and loan finance under HRS § 514B-82.3. In 2003, the Association conducted a vote to authorize the borrowing of money to conduct the renovation of the Town Tower garden and lobby for Harbor Square. At some point, prior to the Petitioners' request for this information, the actual ballots had been lost or destroyed. Respondent informed Petitioners that the actual ballots could no longer be located, however, Petitioners were provided with a copy of the tally sheet confirming 50% owner approval.

(u) Evidence of the Town Tower renovation cost allocation as a common expense. The Budget, which is available to all unit owners, contains this information.

- (v) All documents pertaining to the Town Tower Renovation (2004-2006).

These documents are maintained in chronological order as required by HRS Chapter 514B. Petitioners were provided with these documents on July 2, 5, and 20, 2007.

(w) All Board authorizations pertaining to the Town Tower renovation. All “Board authorizations” are contained in the minutes of Board meetings which are available on the website for the years 2006 and 2007. Furthermore, on May 23, 2007, the 2003, 2004, and 2005 meeting minutes for the Board of Directors were emailed to Petitioner Shaw.

(x) All receipts pertaining to renovation (2004-2006). The Association keeps all of its records in chronological order. These documents were produced in chronological order to Petitioners on July 2, 5, and 20, 2007.

27. At some point after July 20, 2007, Petitioners were provided with a copy of the archive records for the 32 boxes. Petitioners did not attempt to review the documents after receiving the archive records.

II. CONCLUSIONS OF LAW

1. The Petitioners’ claims regarding the disclosure of the Association’s document to Petitioners as articulated in Petitioners’ First Amended Request for Hearing filed with the Office of Administrative Hearings, Department of Commerce and Consumer Affairs (DCCA) was timely, pursuant to HRS § 514A-121.5(b).

2. Hawaii Revised Statutes (“HRS”) § 514B-152 generally governs an associations’ duties to keep records. The statute specifically mandates that:

The association shall keep financial and other records sufficiently detailed to enable to association to comply with requests for information and disclosures related to resale of units. Except as otherwise provided by law, all financial and other records shall be made *reasonably available* for examination by any unit owner and the owner’s authorized agents. . . .

(Emphasis added). Pursuant to HRS § 514B-152, the Association must make its documents “reasonable availab[le]” to the Petitioners.

3. HRS also requires that Association records be maintained in chronological order. HRS § 514B-153(b) provides:

The managing agent or board shall keep detailed, accurate records in ***chronological order***, or the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of common elements and any other expenses incurred. The managing agent or board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(Emphasis added).

4. The testimony and evidence at the hearing on October 31, 2007 and November 1, 2007 demonstrated by more than a preponderance of evidence that Respondent complied with both HRS §§ 514B-152 and 514B-153. Respondent kept the records in chronological order and provided Petitioners with reasonable access to all requested documents.

5. Respondent is not required to provide Petitioners with the Association’s employees’ confidential information contained in the Payroll Ledger.

6. In 2007, at the time Petitioners requested to review the “evidence of 50% approval of Town Tower Renovation loans,” HRS § 514B-154 governed the retention of and disposal of ballots. HRS § 514B-154(c) provides, in part:

After any association meeting, and not earlier, unit owners shall be permitted to examine proxies, tally sheets, ballots, owners’ check-in lists, and certificate of election; provided that:

(1) Owners shall make a request to examine the documents ***within thirty days*** after the association meeting; . . .

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty days after the association meeting. If there are requests to examine proxies and ballots, the

documents shall be kept for an additional sixty days, after which they may be destroyed. . . .

(Emphasis added). At the time Petitioners made their request, more than 30 days had elapsed since the vote and Respondent was under no obligation to retain the actual ballots.

7. In view of the relative conduct of the parties in this matter, Petitioners are hereby ordered to pay Respondent's attorneys' fees which will be submitted by subsequent pleading within sixty days from the Hearing Officer's decision.

DATED: Honolulu, Hawaii, December 12, 2007.



LISSA H. ANDREWS
DEVON I. PETERSON
Attorneys for Respondent
AOAO Harbor Square

OFFICE OF ADMINISTRATIVE HEARINGS
CONDOMINIUM DISPUTE RESOLUTION PILOT PROGRAM
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of)	CDR-2007-9
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CATHERINE SHIM, Individually)	CERTIFICATE OF SERVICE
YUAN Y. SHAW, Individually,)	
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Petitioners,)	
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vs.)	
)	
AOAO HARBOR SQUARE, An Entity,)	
Form Unknown,)	
Respondent.)	
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document will be served on the following party at his address by fax, email and U.S. Mail.

STEPHEN M. SHAW, ESQ.
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Attorneys for Petitioners

DATED: Honolulu, Hawaii, December 12, 2007.



LISSA H. ANDREWS
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